IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 392 of 1988

HONOURABLE MR.JUSTICE KS JHAVERI

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PARMAR KIRITBHAI NATWARLAL - Appellant(s)
Versus
MODI SOMCHAND CHANDULAL & 1 - Defendant(s)

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Appearance :
MR KB PUJARA for Appellant(s) : 1,
None for Defendant(s) : 1,
MR MD PANDYA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 08/08/2006

ORAL JUDGMENT

1.0 This appeal, at the instance of the original claimant, is for enhancement of compensation as awarded by the Motor Accident Claims Tribunal (Main), Banaskantha dated 31st May 1986 in Motor Accident Claim Petition No.85 of 1983 whereby the Tribunal has awarded a sum of Rs.31013.85ps along with interest at the rate of 6% per annum from the date of the application till realization.

2.0 The case of the claimant was that on 28th November 1982 Kirtibhai, aged 14 years, was standing near S.T. Bus stand and at that time a bus belonging to Gujarat State Road Transport Corporation came in excessive speed and knocked down the said Kirtibhai. As a result of this, he sustained serious injuries and his left hand was crushed. Due to this he has become permanently disabled on the left hand. He therefore filed the aforesaid claim petition claiming a sum of Rs.1 lac which was partly allowed.

3.0 Learned Advocate for the appellant submitted that the Tribunal has committed an error in awarding only Rs.10000/- for pain, shock and suffering and the amount should have been at least Rs.25000/-. He further submitted that because of the disability the claimant could not continue his academic career. According to him in the case of the claimant permanent partial disability for the purpose of loss of future income ought to have been at least at the rate of 50%. He next contended that the Tribunal has taken the income of the claimant at Rs.500/- per month, which should have been Rs.750/- per month. Learned Advocate also submitted that the loss of future income due to permanent partial disability

should have been assessed at Rs.90000/- instead of Rs.18000/- He has further submitted that the Tribunal ought to have awarded interest at the rate of 12%.

4.0 Learned Advocate for the respondent submitted that the Tribunal has considered all the aspects of the matter including the rate of interest and therefore no case is made out to cause interference in the appeal.

5.0 As regards pain, shock and suffering is concerned, the Tribunal has awarded a sum of Rs.10000/. The left hand of the claimant was crushed in the accident. Initially he had to remain in hospital at Shrihari and thereafter in Civil Hospital at Palanpur. His left hand was removed. Therefore, looking to the injury sustained by the claimant, I am of the view that the amount awarded under the head of pain, shock and suffering at Rs.10000/- is on the lower side and interest of justice would be met by awarding a sum of Rs.15000/-. Therefore the claimant would be entitled to additional amount of Rs.5000/- under this head.

6.0 With regard to future loss of income is concerned, as per the ratio laid down in the case of ***"U.P. State Road Transport Corporation and Ors. Vs. Trilok Chandra & Ors."*** reported in 1996(3)GLR 136 the income should have

been doubled and then averaged. If such calculation is adopted on the basis of the figure taken by the Tribunal, the claimant would be entitled to additional amount of Rs.9000/-. As regards the income and other aspects of the matter, I am of the opinion that the Tribunal has taken a correct view of the matter and no interference is required. The Tribunal has awarded a sum of Rs.3013 for medicine, transportation, etc. in which case there cannot be any grievance as the Tribunal has awarded the maximum amount. Looking to the age of the claimant even the multiplier taken by the Tribunal is just and proper.

7.0 In the present case the Tribunal has granted interest at the rate of 6%. Learned Advocate has claimed interest at the rate of 12% and he has relied upon various decisions to support his contentions.

8.1 Mr. Pujara has relied upon a decision in the case of Nasimbanu W/d Sirajuddin Amruddin Kazi & Ors Vs. Ramjibhai Bachubhai Ahir & Ors., reported in 2005(2) GLR 1476 wherein it is held that the matter remained pending in the tribunal for 8 years for which the claimant was not responsible and therefore claimant is entitled to interest from the date of filing of claim petition at the rate allowed by

Tribunal at 12%. He has also relied upon a decision in the case of K.R. Tandon Vs. Om Prakash wherein the Apex Court held that the way inflation has galloped in the past two decades and the value of the rupee eroded, there was no justification why interest at the rate of 12% per annum was not awardable in that case. Accordingly interest rate was raised from 6 to 12%.

8.2 In the case of Kulwant Kaur V. State of Haryana, reported in 1999 ACJ 1278 the Apex Court held that there was no justification to enhance the rate of interest to 12% in view of the fact that the accident took place in 1982.

8.3 In the case of Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and others, reported in AIR 1992 SC 1261 wherein the Court has awarded interest at the rate of 12% instead of 6%.

8.4 In the case of Jai Bhagwan Vs. Laxman Singh, reported in (1994)5 SCC 5 the Court has awarded interest at the rate of 12% per annum.

8.5 In the case of United India Insurance Co. Ltd. Vs. Narendra Pandurang Kadam and Ors, reported in AIR 1995 SC 782l the Supreme Court has not disturbed the interest granted at the rate of 12%.

8.6 Again in the case of Shashendra Lahri Vs. UNICEF and others, reported in (1997)11 SCC 446 the Apex Court awarded interest at the rate of 12% per annum.

8.7 In the case of Nagesha Vs. M.S.Krishna and Another, reported in (1997)8 SCC 349, the Apex Court has awarded interest at the rate of 1% per annum.

8.8 In the case of Muthaiah Sekhar Vs. Nesamony Tpt. Corporation Ltd., reported in AIR 1988 SC 3064 the Apex Court has granted interest at the rate of 12% per annum.

8.9 In the case of Dr. K.R. Tandor Vs. OM Prakash and Another, reported in (1998)8 SCC 421 the Apex Court enhanced the rate of interst to 12%.

8.10 In the case of Renu Bala Kalita V. Dhiren Chakravarty, reported in (1998)8 SCC 363 interest was directed to be paid at the rate of 12% per annum.

8.11 In the case of Kaderkunju Vs. Maheswaran Pada Nair, reported in (1999)9 SCC 207 the Apex Court has awarded interest at the rate of 12% per annum.

8.12 In the case of Amar Singh Vs.Ishwar and others, reported in (1999)1 SCC 214 also the interest was awarded at the rate of 12% per annum.

8.13 In the case of Devi Dayal Kansal and others Vs. Raj Roop and Anr, reported in (2000)10 SCC 314 the Apex Court awarded interest at the rate of 12% per annum.

8.15 In the case of Smt. Sneha Dutta and Anr. Vs. Himachal

Road Transport Corpn, reported in AIR 2000 SC 201 interest awarded was 12% per annum.

8.16 In the case of Municipal Corporation of Greater Bombay V. Shri Laxman Iyer, reported in AIR 2003 SC 4182 interest rate was reduced from 15% to 12%.

8.17 In the case of Maitri Koley and Anr. Vs. New India Assurance Co. Ltd. reported in (2003)8 SCC 718 the Apex Court has not disturbed the interest of 12% granted by the Tribunal.

9.0 In all the above decisions the interest rate awarded is 12% per annum. However, in those case there is no specific discussion on the point of interest. The Apex Court has either continued the interest granted by the Tribunal or restricted it to 12%. Apart from that the period of such interest is from the year 1992 to about 2000 during which the rate of interest had gone up, but the present trend of interest is downward. In the above decisions no principle has been laid down by the Apex Court for award of interest at the rate of 12%.

10.0 As against the above, learned Advocate for the respondent relied upon the following authorities.

10.1 In the case of Shree Subhlaxmi Fabrics Pvt. Ltd. V. Chand Mal Baradia, reported in AIR 2005 SC 2157 the Apex Court has awarded interest at the rate of 7.5%.

10.2 In the case of M.D. Karnataka Power Corpn. Ltd. V.

Geetha, reported in 1988 ACJ 251, the Karnataka High Court has considered in detail about the interest to be awarded to the claimant. Paragraphs 28, 29 and 30 of the said judgement read as under:

> 28. The interest should not be awarded for the damage done. It should be awarded to the claimants for being kept out of money which ought to have been paid to them. When a composite rate is applied, it is important to make a mental note of what items of the award go to the "interest pool" and what items do not go to "interest pool". While special damages – sums actually spent or lost up to the date of trial such as medical charges, loss of earnings, and out of pocket expenses, etc. - qualify for interest, however, the award for loss of future earnings or the loss of dependency cannot be said to be money kept out of the claimants because they pertain to a loss of the future income and are in fact paid in advance. This would mean that any composite rate of interest must take into account the size of the awards in the "interest pool" and of those in the non-interest pool". The provisions for erosion of value of the money could only be, so far as special damages are concerned, for the period between the incurring of the special damages and their realisation; and in the case of loss of future pecuniary benefits form the date of the award till date of realisation. But, as stated earlier, a composite rate can be evolved and applied keeping these distinctions in mind.
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> 29. It is erroneous to predicate that there is anything in the law or the binding precedents that wherever interest is awarded, its rate should not be less than 12 per cent. Both the award and the rate of interest are in the discretion of the Tribunal to be exercised judicially and judiciously, not arbitrarily or capriciously, but in accordance with sound principles.

> 30. Generally speaking, a composite rate of 6 per cent should be considered satisfactory without any specific itemization because the component of compensation in the "interest pool" is comparatively smaller and the sizable component is the amount awarded for the loss of future dependency. We, however, hasten to add that the Tribunal have an undoubted discretion to award higher rates of interest, if in their opinion, the circumstances of the particular case justify such higher rates."

13. Thus, the interest is being granted to the claimant for being kept out of money which ought to have been paid to the claimant. I am also of the view that it is erroneous to predicate that there is anything in the law or the binding precedents that wherever interest is awarded, its rate should not be less than 12 per cent. Moreover, the respondent is engaged in a public utility service, which should not be burdened with heavy interest. Apart from that, looking to the present downward trend of rate of interest, and considering the above judgements, I am of the view that interest at the rate of 6% would meet the ends of justice.

14. In view of the above discussion, the claimant shall be entitled to an additional sum of Rs.5000/- under the head of pain, shock and suffering and a sum of Rs.9000/- under the head of future loss of income. Thus, it is held that the claimant

shall be entitled to an additional sum of Rs.14000/-. In view of the above discussion, the claimant shall be entitled to interest at the rate of 6% as awarded by the Tribunal. The award of the Tribunal is modified accordingly. Appeal is allowed to the aforesaid extent. No order as to costs.

[K.S. JHAVERI, J.]

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